

**IN THE SUPREME COURT
STATE OF MISSOURI**

IN RE:)
)
RICHARD A. KOEHLER,) **Supreme Court #SC85511**
)
Respondent)

RESPONDENT'S BRIEF

Richard A. Koehler - #25354
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JURISDICTIONAL STATEMENT

Respondent believes the Informant's Jurisdictional Statement is correct and accurate.

STATEMENT OF FACTS

Respondent does not believe it necessary to disagree with or dispute the Statement Of Facts which Informant has set forth in Informant's brief.

POINTS RELIED UPON

Respondent addresses a portion of Informant's Points Relied Upon - I in his Argument section which follows.

Respondent has previously cooperated with and agreed with Informant with regard to Informant's Points Relied Upon - II.

ARGUMENT

**... HE MISREPRESENTED THE NATURE OF HIS INVOLVEMENT
IN THE CASE IN TESTIMONY GIVEN IN 1995, AND HIS
WILLFUL VIOLATION OF A COURT ORDER AND
TESTIMONIAL MISREPRESENTATIONS UNDULY
PROLONGED AND EXACERBATED THE COST
OF THE BANKRUPTCY CASE**

The Respondent addresses the above from the Informant's Argument - I.

A: Respondent testified truthfully before the bankruptcy court in the hearings in May and June of 1995. He told the bankruptcy court quite candidly what he had done with respect to the Everett Grant (hereafter Grant) bankruptcy case, see, for example, **A-165-8 thru A-173-16.**

In the course of the hearings before the bankruptcy court Respondent characterized what he had done with regard to assisting Grant after having been disqualified as being in the nature of the effort of a paralegal. The bankruptcy court did not agree at all with that characterization; did not believe that characterization was in any way valid. Respondent understands and accepts that aspect. However, Respondent believes the fact that the bankruptcy court did not

A: continued

believe or agree with that characterization should not mean that his testimony otherwise was not truthful.

B: If Informant's use of "prolong" refers to the interval between the conclusion of the contempt proceeding on June 22, 1995 and the bankruptcy court's Amended Order Finding Contempt And Imposing Sanctions of June , 09, 1997, Respondent does not necessarily know why that interval happened.

The bankruptcy court's contempt hearings against the Respondent took place on May 25 and June 22, 1995, one day of hearing in each month.

Grant's bankruptcy case was re-opened at the time of the first day's hearing, May 25, 1995. The re-opening, of course, certainly did something to prolong Grant's bankruptcy case, - a fact which Respondent is sorry that he caused.

Bankruptcy Judge See made a very detailed oral "findings of fact" and "conclusions of law" from the bench at the conclusion of the second day's hearing, see **A-361 thru A-407**.

The bankruptcy case vis-a-vis the contempt proceeding then "sat" for almost two (2) full years. Bankruptcy Judge See's Amended Order Finding

B: continued

Contempt And Imposing Sanctions was not filed until June 09, 1997, **A-410 thru A-425**. (In actuality, Bankruptcy Judge See filed a Judgment dated June 03, 1997; it was followed by an Amended Judgment dated June 09, 1997; it was followed by a Second Amended Judgment dated June 12, 1997; a Third Amended Judgment was filed December 18, 1997 after the decision from the Bankruptcy Appellate Panel had been handed down, see copies of such items attached to Respondent's brief.)

Respondent was and is not aware of why there was almost a two year interval between the last day of the contempt hearing and the issuance of Bankruptcy Judge See's Amended Order Finding Contempt And Imposing Sanctions unless it possibly had something to do with Respondent's involvement with the Tarkio College bankruptcy case.

The Tarkio College bankruptcy was a chapter 11 proceeding before the United States Bankruptcy Court for the Western District of Missouri, Case No. 91-50261-ABF. Respondent's involvement with the Tarkio College bankruptcy case came up during his testimony to the court in the course of the contempt proceeding, see **A-354-15 thru A-358-10**. In early 1991, Respondent on behalf of

B: continued

Tarkio College had initiated a lawsuit against the auditors of Tarkio College, DeLoitte & Touche, to recover some \$22,000,000.00+ that Tarkio College owed the U. S. Department of Education but had been replaced in that suit as counsel for the college, see **A-354-19 thru 21 and A-355-16 thru 19** also copy of letter from the U. S. Attorney's Office for the Western District of Missouri which is attached to this brief.

Respondent had, in the Tarkio College bankruptcy case, submitted a general unsecured claim for a fee based on quantum meruit on May 02, 1997.

Respondent's unsecured claim was denied by an order of Bankruptcy Judge Federman issued and filed on May 23, 1997. Bankruptcy Judge Federman's denial generally ended Respondent's involvement and/or interest in the Tarkio College bankruptcy case. Bankruptcy Judge See's first Judgment followed shortly thereafter on June 03, 1997.

Otherwise Respondent has no specific knowledge or understanding, then or now, with regard to the almost two year delay between the bankruptcy court's oral

B: continued

findings and conclusions on June 22, 1995 and its Amended Order . . . which was filed on June 09, 1997.

C: Respondent did not necessarily exacerbate the cost of Grant's bankruptcy case.

The Bankruptcy Appellate Panel amended the monetary judgment lodged against Respondent and in favor of Grant by Bankruptcy Judge See, see **A-437**, reducing the monetary award by \$1,750.00. Respondent has satisfied that monetary judgment, see a copy of a Satisfaction Of Judgment which is attached to Respondent's brief.

Respondent paid for the transcript for the appeal of the contempt proceeding; Respondent paid a money judgment to Grant for "lost work" and "stress and anxiety"; Respondent paid a money judgment to Grant for his counsel's fees for the contempt proceeding; Respondent paid a money judgment to Grant which effected a return of money that Grant had paid to Respondent. In most all respects Grant was made whole, monetarily, with regard to the contempt proceeding against Respondent.

D: To the extent that Grant did in fact go through a successful chapter 11 bankruptcy reorganization he did receive competent and capable assistance from Respondent. Indeed, Grant's counsel agreed that Grant believed that Respondent's assistance and effort on his behalf was, in most all respects, in Grant's best interest, see **A-307-15 thru 308-10**.

CONCLUSION

Respondent believes he respectfully cooperated with Informant to bring this matter to a reasonable conclusion. Informant, by letter dated July 22, 2003, offered and Respondent accepted a public reprimand in this matter. Respondent sincerely believes this matter, with a public reprimand, would bring closure to this very regrettable part of his personal and professional life.

Respondent can tell the Court that he truly regrets that his actions with respect to his involvement with Everett Grant would result in casting a disparaging shadow toward the legal profession as well as resulting in his public embarrassment with respect to his family and those who know him.

Respectfully Submitted,

/s/ Richard A. Koehler

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CERTIFICATE OF SERVICE: I HEREBY CERTIFY that the item

RESPONDENT'S BRIEF

has been served by sending two copies thereof, via the U. S. Postal Service,
postage prepaid, to:

Sharon K. Weedin
Staff Counsel
3335 American Ave.
Jefferson City, MO 65109

this 15th day of November, 2003. /s/ Richard A. Koehler
Richard A. Koehler - #25354

CERTIFICATION: SPECIAL RULE NO. 1(c)

I certify to the best of my knowledge, information and belief, that this brief:

1. Includes the information required by Rule 55.03
2. Complies with the limitations contained in Special Rule No. 1(b);
3. Contains 1,100 words according to Word Perfect 7.0, which is the word processing system used to prepare this brief; and
4. That Norton Anti-Virus software was used to scan the submitted disk for viruses and that it is virus free.

/s/ Richard A. Koehler

RESPONDENT'S INCLUDED APPENDIX CONTAINS

1. A copy of the Judgment dated June 03, 1997;
2. A copy of the Amended Judgment dated June 09, 1997;
3. A copy of the Second Amended Judgment dated June 12, 1997;
4. A copy of the Third Amended Judgment dated December 18, 1998;
5. A copy of a letter from the United States District Attorney's office for the Western District of Missouri;
6. A copy of the Satisfaction Of Judgment filed in the Grant bankruptcy case.